



**AMENDED SUMMARIZED MEETING MINUTES**

**CITIZEN CODE OF ETHICS TASK FORCE  
REGULAR MEETING  
PINNACLE CONFERENCE ROOM  
7575 EAST MAIN STREET  
SCOTTSDALE, ARIZONA  
FEBRUARY 22, 2006**

**PRESENT:** Art DeCabooter, Chairman  
Jim Bruner (arrived at 5:18 p.m.)  
Margaret Dunn (arrived at 5:08 p.m.)  
Ned O'Hearn  
Rita Saunders-Hawranek  
Dewey Schade

**ABSENT:** Jim Derouin

**STAFF PRESENT:** Jay Osborn  
Teri Traaen (left at 6:10 p.m.)  
Valerie Wegner

**ALSO PRESENT FOR ALL OR PART OF THE MEETING:**  
Councilman W.J. "Jim" Lane  
Lisa Blyler, Staff  
Bill Crawford  
Tim Delaney, Center for Leadership, Ethics & Public Service  
Michael S. Kelly  
George Knowlton  
Nan Nesvig  
Mark Scarp, Scottsdale Tribune

**CALL TO ORDER**

The regular meeting of the Citizen Code of Ethics Task Force was called to order by Chairman DeCabooter at 5:11 p.m.

## **ROLL CALL**

Chairman DeCabooter noted that members of the Task Force were present as stated above.

## **OPEN CALL TO THE PUBLIC**

Mr. Michael Kelly addressed the meeting. He has a concern about enforcement, particularly regarding accepting gifts and undue influence. In the draft Code, the City Charter is cited but, in fact, there is no specific action that can be taken in the case of ethics violations. He recalled a recent situation when it was determined that City Council was deemed not to have standing to sanction one of its members. If public officials are to be held accountable, he believes that recourse to sanction must be available. Without adding sanctions to the Code provisions, Mr. Kelly stated that it remains an incomplete document.

Mr. Kelly added that he is concerned about definitions. Earlier he had suggested an appendix to include definitions. Perhaps the legal definitions Mr. Delaney has highlighted should be addressed by a footnote.

Mr. George Knowlton thanked the Task Force members for their hard work. He wants to ensure that anybody who works for the City in any capacity, even as a volunteer, has to go through this. There should be no loopholes. He considers the Code a great document.

Mr. Bill Crawford expressed his gratitude to the Task Force for having drafted the Code of Ethics. This brings a point of reference, authority, and a consequence that have been lacking hitherto. He hopes that City Council moves forward expeditiously to adopt the Code, which will enable them to concentrate on the real business of the City.

## **APPROVAL OF THE FEBRUARY 7, 2006 MINUTES**

**MR. SCHADE MOVED FOR THE APPROVAL OF THE FEBRUARY 7, 2006 MINUTES. THE MOTION WAS SECONDED BY MS. SAUNDERS--HAWRANEK.**

Mr. Schade noted that in the third paragraph on page 4, he in fact agreed with the three-person panel concept. He disagreed with the idea of only using one person. He requested that the sentence "Mr. Schade struggled with the perception that censure by a panel of judges would not really mean anything" be stricken from the minutes. The discussion at the time was about the possibility of giving the power of censure to City Council.

Mr. Osborn noted that on the third paragraph from the bottom of page 3, the sentence "Task Force members agreed with Mr. Osborn's suggestion," should be stricken. At the end of the third line on page 6 the words "for employees" should be removed.

Mr. Delaney noted that on page 2, in the third paragraph of Section 1, the order of the last two sentences should be reversed for clarification. On page 4, paragraph 5, Mr. Bruner was referring to the City Council being comfortable with the package, rather than the Task Force. On the second paragraph of page 5, the final sentence should start "Mr. Bruner commented that although he intended..."

**MS. DUNN MOVED FOR THE APPROVAL OF THE FEBRUARY 7, 2006 MINUTES AS AMENDED BY MR. SCHADE, MR. OSBORN, AND MR. DELANEY. THE MOTION WAS SECONDED BY MS. SAUNDERS--HAWRANEK AND CARRIED BY A UNANIMOUS VOTE OF SIX (6) TO ZERO (0).**

In response to a comment by Mr. Bruner, Dr Traaen undertook to ensure that the approved minutes of all Task Force meetings are posted on the website.

## **1. Final Review of the Ethics Policy/Program**

Mr. Delaney reviewed the changes incorporated in the February 15th draft of the Code, sent to the Task Force members by e-mail on February 17th. He noted that he felt it was unfair to expect Council Members to sign the Code of Ethics and put it into immediate enforcement when the educational components are not yet available. He consulted with staff and suggested that July 1st would be a reasonable start date. He highlighted the additional responsibilities of the City Attorney's Office in the new expanded version of paragraph 4. An additional new paragraph requests the City Manager to implement the program by July 1st.

Mr. Delaney described the format of the final report. Attached to it is Exhibit 1, the Public Service Ethics Program, which is an overview. Originally the Task Force had recommended monthly training programs. City staff recommended that training programs for new hires take place once a quarter. At the initial orientation session, staff will distribute some ethics-related materials. The enforcement section contains more detail than previously.

Exhibit 2 is the Code of Ethical Behavior. This is now divided into two parts. The Code is Section 1. Section 2 will be the enforcement section, to be drafted in ordinance format by the City Attorney's Office. The draft refers now to "substantial conflict of interest," because that is what the State statute refers to.

He added that State law has definitions of substantial and remote interest. Adding these definitions to the Code would make it a much longer document.

Mr. Delaney noted that an earlier draft prohibited the use of any City telecommunications equipment for personal use. However there are situations where this is legitimate (such as calling for a doctor's appointment). The City Attorney's Office came up with good language reflecting the norm in government service.

Mr. Delaney added a one-year statute of limitations for ethics complaints. He added more detail about the independent ethics resources.

In response to a question by Mr. O'Hearn, Dr. Traaen clarified that the training and development division she supervises will construct the curriculum and deliver the program under the time frames identified. They have begun framing the delivery system. Mr. O'Hearn noted he is most concerned about the time frames for the City Attorney's Office and the outside officers to respond to complaints. He wished to be certain that these are realistic and acceptable to City staff. Mr. Osborn replied that City Attorney Robberson and he reviewed the entire set of documents, adding that a prompt response is expected in these cases.

Mr. Delaney noted that other jurisdictions have much shorter time frames. Knowing the pressures on the City Attorney's staff, he had allowed a longer time frame. However, on page 11, he added language that encourages people to respond as soon as possible, even though the City Attorney may be given 15 days.

Mr. Delaney explained that Dr. Traaen and staff at the City Attorney's Office saw a first draft of the new one-page document, which incorporated some new ideas that came in. Mr. Schade also raised a number of important new points. He reviewed the Proposed Amendments, noting that election issues are properly dealt with by the City Clerk's Office. Omitting to clarify

this might send the signal that complaints can only be lodged against an incumbent, which is unfair.

Ms. Dunn asked about confidentiality in submitting a complaint. Mr. Delaney replied that the City does not have the authority to keep complaints confidential. Ms. Dunn stated that complaints should be kept confidential until the City Attorney has had an opportunity to investigate whether or not it has any foundation. Mr. Osborn replied that a complaint would likely remain confidential unless the complainant publicized it, or the City received a public records request. Ms. Dunn noted that a person filing a frivolous complaint and getting an associate to file a public records request could place the City in an embarrassing position. Mr. Delaney remarked that confidentiality could not be imposed on the complainant.

Mr. O'Hearn noted that the process includes a public hearing. He asked whether a complaint that was found to be without merit could be put on the expedited agenda of a City Council meeting. This would minimize further exposure and embarrassment caused by a frivolous complaint. There is nothing to be done about the fact that it has to come before a public body, but Mr. O'Hearn stated that a shortcut way to deal with complaints would be desirable. Mr. Bruner noted that the public hearing gives the person against whom the complaint is made a chance to have their day in court. Mr. Delaney noted that one of the concerns with a three-person panel is that the process necessarily takes longer.

Mr. Schade noted that the ethics officer is not to determine whether or not the allegation is true. That individual is only making the determination that if the facts alleged in the complaint were true they would constitute an ethics violation. This is an important distinction.

Mr. Delaney suggested that perhaps the wording encouraging officials to respond quickly should be strengthened. Mr. Schade commented that the Code contains a very strong provision that a person filing a complaint does so under oath under penalty of perjury. The panel might find no ethical violation, but that is far different than saying it was frivolous.

Mr. Delaney suggested striking the phrase "dismissed as being without merit" on page 5, on the fourth line in paragraph B at the top of the page.

Ms. Dunn asked whether there are standards in the Arizona State Statutes as to what is frivolous and what is not. Mr. Delaney replied that the substantive piece is on page 9 and that it contains fuller language. On page 5, paragraph C, line 2, the wording should be plural throughout, referring to Boards and Commissions.

A discussion ensued on the wording regarding disposition of complaints determined to be malicious. The consensus of the meeting was to remove the first occurrence of the phrase "without merit" on page 5, paragraph B, and leave the second use of the phrase.

Mr. Schade suggested reinserting the heading at the top of page 6, since it is a continuation. Mr. Delaney undertook to do so. On the second to the last paragraph on page 6, the phrase "conflict of interests" should be written consistently each time it occurs.

Mr. Delaney noted that in the second paragraph on page 7, line 5, the words "such as" should be struck and the word "by" should be inserted. A discussion ensued. The consensus was to leave "such as" and add "by".

Mr. Delaney noted that on page 8 under "Executive Session," on the third line of the second paragraph, the phrase "are discussed or considered" should be stricken.

In the first paragraph dealing with the preservation of public documents, Mr. Delaney noted he became concerned that this might be misread in an attempt to say that any documents that are written between public officials and private citizens or between public officials are automatically open to public inspection. This would supersede Arizona's Public Records laws, which state that attorney-client communications are privileged. Mr. Delaney added that an introduction to this section is needed to clarify this point: "Consistent with Arizona's Public Records laws, written communication..."

A discussion ensued on the page headers. The Task Force agreed that the headers should be consistent.

On page 9, Mr. Delaney suggested inserting a new paragraph 4 after paragraph 3, to deal with election complaints: "Any complaints relating to City elections shall be filed with or referred to the City Clerk for review and disposition as provided by law."

Reviewing the process, Mr. Delaney noted that City Council would probably adopt the narrative in the ethics program by a resolution. The Ethics Policy would be adopted by ordinance and therefore be enforceable. Mr. Osborn confirmed that was the case.

On page 9 on the third line of paragraph B (1), the expression "for being without merit" should be deleted. On line 5, before "refer," the phrase "dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the City Attorney determines the complaint was false, misleading, frivolous, or unsubstantiated," should be inserted.

On page 10 on the fifth line of paragraph C (1), Mr. Delaney suggested that the City Attorney could select a pool of ten to twelve qualified people that would remain in place for three years, rather than making an annual selection. By having a standing pool of qualified people, there would be no accusations that they went out and hired buddies. At the end of the sentence after "Ethics Panel," the rest of the sentence should be stricken.

Mr. Delaney said that on lines 11 and 12 "retain the services of one or more" should be deleted and replaced by "complete the pool by selecting independent." Ms. Saunders-Hawranek remarked that it is appropriate for the pool members to select their own Chair, rather than the Chair being designated by the City Attorney. Mr. O'Hearn noted that the pool members would not convene as a body. A discussion ensued.

Under paragraph C (2), line 5, Mr. Delaney noted that the phrase "for being without merit" should be deleted. On the following line after "laws," insert "dismiss it as being without merit and refer it to the appropriate authorities for action against the complainant if the independent ethics officer determines the complaint was false, misleading, frivolous, or unsubstantiated."

Mr. Delaney added that on the last line of paragraph 3, "dismiss the complaint" should be stricken. The sentence should say, "either accept or reject the ethic's panel report."

Mr. Delaney noted that changes to page 11 were already discussed. The proposed new paragraph 4 would deal with public information regarding action taken and reports issued. This is to clarify that when a determination is made and sent to everybody concerned, a copy goes to the City Clerk, so it is clearly a matter of public record.

Mr. Delaney addressed Mr. Kelly's comments regarding the matrix and enforcement. A discussion ensued. Summarizing, Mr. Delaney commented that enforcement could be by the City's Ethic's Code, except where matters are already covered by other jurisdictions.

On page 12 (attachment B), Mr. Delaney asked the Task Force members whether they wanted to change the expression "wink or nod" to something less colloquial. Task Force members agreed they found that expression acceptable.

Mr. Delaney addressed Mr. Knowlton's comments. He acknowledged a concern that the draft mentions applying to "Boards, Commissions, Committees, and Task Forces." In future someone might attempt to circumvent the provisions of the Code of Ethics by using another term. He recommended adding "or any other advisory groups."

Mr. Schade commented that open meetings and public record are of paramount importance to him. He wants to ensure that the ethics process is entirely open every step of the way. Mr. Delaney replied that certainly the documentation would be, to a point. For example, there may be differences of opinion about the applicability of the Open Meeting Law to the three-person panel.

Mr. Schade remarked that his main concern is what happens when the ethics panel finishes its report. Mr. Delaney explained that at the conclusion of the first initial screening, the City Attorney or the independent ethics officer would take action. Under the ordinance they are required to give notice to the complainant and to the person against whom the complaint was lodged. They also are required to file a copy of the notice with the City Clerk on the same date.

Mr. O'Hearn stated that the Code of Ethics should be a user-friendly document. He feels some areas need further editing to eliminate unnecessary verbiage and convoluted punctuation. He handed a marked copy of the Code to Mr. Delaney. Mr. Delaney asked the Task Force whether they would give him editorial license to polish the document and then return it to the Chairman for final assurance that nothing in the meaning had been altered. Noting that he trusts Mr. Delaney's judgment, Mr. Schade said he would like to see the finalized document.

Mr. O'Hearn noted that it would not be necessary for the Task Force to meet to accomplish this. He continued discussing the stylistic changes he was proposing. On page 2, he suggested saying, "The new Ethics Code includes an Annotated Matrix to emphasize some critical components of existing public service ethics laws."

Mr. Delaney expressed a concern as to whether the changes would suffice for purposes of the resolution, and noted that he would consult with Mr. Osborn.

Mr. O'Hearn suggested that the City Attorney could nominate a Chair for the ethics resource group, rather than designate the Chair. Discussion ensued.

Mr. Schade reported that he tried to zero in on those parts that were crucial for an ethics program so that it would be a transparent, open process that would have strong public support and send the message that Scottsdale has a strong ethics program that is fair, independent, and impartial. He focused on page 10 primarily section C. His notes covered ten points, and Mr. Delaney had addressed and clarified seven of those points. He distributed copies of the notes to the Task Force.

Mr. Schade proceeded to address the remaining points 13, 15, and 16 under Section C (1). Given the duties and power of the City Attorney in the process, Mr. Schade stated that retired judges and law professors should form the majority of the resource group. Independent outside practicing attorneys are not as good for the ethics resource group, and he suggested that they be limited to no more than one third of the total ethics resource group. The public

perception could be that they are subject to influence. He reminded Task Force members that Mr. Derouin had argued that the resource group should be drawn from retired judges and law professors. Task Force members endorsed this position.

Mr. Delaney cautioned that if no more than a third of the ethics resource group can be practicing lawyers and not enough judges can be found, a City official could be smeared by a complaint that cannot be heard. Mr. Schade noted that the panel would be in place shortly after the adoption of the Code. Task Force members concurred unanimously with Mr. Schade's suggestion.

Mr. Schade noted that the City Attorney is not independent. He believes the City Attorney's role should be restricted to picking the ethics resource group. The resource group should select the independent ethics officer. That person is going to get more work than the other resource group members and will not sit on the cases. He stated it is good for the resource group to meet. A discussion ensued. Mr. Schade emphasized that if a need to convoke an ethics panel ever arises, he wants the public to perceive that the process is fair. Mr. O'Hearn noted that there are three possible choices:

- Stay with the process outlined in the current draft.
- The City Attorney nominates the independent ethics officer.
- The group votes for the independent ethics officer.

Ms. Saunders-Hawranek commented she prefers the third option.

Ms. Dunn, Mr. Bruner, Mr. O'Hearn and Chairman DeCabooter chose the second option. Mr. Schade argued that rotating the position every six months would make sense. Ms. Saunders-Hawranek agreed that this is an issue of public perception. Chairman DeCabooter suggested that the position of independent ethics officer should rotate on an annual basis. The other Task Force members concurred.

Mr. O'Hearn stressed that it must be made unequivocally clear in the document and in the summary that the independent ethics officer is not a City staff person.

Mr. Bruner requested that Task Force members receive a copy of the document after Mr. Delaney has incorporated the changes under discussion. He suggested that the Code of Ethics contain a reference to the need to revisit the Code from time to time in the future. Task Force members concurred.

Mr. O'Hearn asked how the review process would take place. After discussion, it was agreed that Mr. Delaney would select someone from the Task Force to review the changes to the document. Chairman DeCabooter directed Mr. Delaney to send the revised document to all of the Task Force members prior to having a final meeting.

## **2. Future Meeting Schedule and Agenda Items**

After discussion the next meeting was scheduled for Thursday, March 2nd at 4:00 p.m.

Mr. Delaney remarked that the Task Force should take pride in the requirement for officials to sign an agreement before they take office. This is incredibly important. The matrix will put officials on notice that ethics is serious. The Personal Interest Disclosure Form will eliminate so many problems. The provision for meaningful, comprehensive education within one month of taking office is another important element. Mr. Delaney stated that the Scottsdale Code of

Ethics would serve as a model to other entities. Mr. Schade thanked Mr. Delaney for helping the Task Force to craft one of the best Code of Ethics programs.

### **3. Open Call to the Public**

Mr. Crawford commented that to him, the phrase "without merit" is somewhat ambiguous. He suggested substituting "not prosecutable." This would remove the question from the political arena.

Mr. Kelly acknowledged the importance of the education and public disclosure of conflicts of interest components of the Code of Ethics. Although in a perfect world, enforcement provisions would never need to be exercised, he noted that in the real world people know the law but some are unable to comply. The Task Force has exceeded his expectations. Scottsdale citizens want to ensure ethical behavior and improve the perception of ethical behavior in the City government. He added that the final document has to be formulated, adopted by City Council, and then implemented. Concerned citizens are watching for the actual implementation.

Councilman W.J. "Jim" Lane thanked the Task Force for all that they have done.

He noted one small concern about paragraph 2 on page 8, which deals with executive sessions related to personnel evaluations. He wondered why was that part of the Code of Ethics and noted that the presiding judge is not included in the list of charter officers. The City Clerk usually sits in on executive sessions and no mention is made of that in the document. Task Force members agreed this was an oversight.

### **Adjournment**

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 7:16 p.m.

**Respectfully submitted by:**

Valerie Wegner  
Administrative Secretary, Human Resources

**Reviewed by:**

Art DeCabooter, Chair

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Officially approved by the Citizen Code of Ethics Task Force on March 2, 2006.